91-2083

Supreme Court, U.S.
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NO.

in the

Supreme Court

of the

United States

OCTOBER TERM, 1992

FRANK TAYLOR, MARY TAYLOR

Plaintiffs,

vs.

FEDERAL LAND BANK et al

Defendants.

PETITION FOR A
WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Frank Taylor
1207 Pioneer
Dallas, Texas 75224
214-948-8449
Pro Se

QUESTIONS PRESENTED FOR REVIEW

1. Whether "unpublished" and "not for publication" on Circuit Court of Appeals rulings indicates a denial of the rights guaranteed to American Citizens by the U.S. Constitution, statutes enacted by Congress, and U.S. Supreme Court decisions.

2. Whether a RICO complaint can be dismissed before any discovery can be completed.

3. Whether it is incumbent upon this Court to further define the boundaries of the Clayton Act and RICO.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the Eighth Circuit from which the certiuari is sought is "unpublished." See Appendix A. This opinion was issued on January 27, 1992. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. section 1254 (1).

A petition for rehearing was denied on March 11, 1992. Appendix B. The district's court order is attached as Appendix C.

The Plaintiffs sued Federal Land Bank of Omaha and other parties under 18 U.S.C. section 1961 et. seq. (RICO) for the theft of a home engineered by Federal Land Bank and others over a four-year period. The specific portions of the statutes enacted by Congress which are relevant to this petition are:

18 U.S.C. section 1961 (D): any offense involving fraud connected with a case under Title 11, fraud in the sale of securities...

28 U.S.C. section 471 et seq.: the Judicial Improvements Act of 1990.

The Federal Rules of Civil Discovery.

The Clayton Act 15 U.S.C. section 15 (providing a private remedy and treble damages). See House hearings at 543-44, 548, 559.

STATEMENT OF THE CASE

The instant action originated in a bankruptcy action in the United States Bankruptcy Court for the Northern District of Iowa, Bankruptcy No. 86-01844C, contested number 1465, in a Court Order by the Honorable M.R. Melloy dated Oct. 6, 1986.

The gist of the Order was that the parties, Federal Land Bank of Omaha, Frank J. Taylor, and Mary E. Taylor, had reached an agreement as to adequate protection of a debt regarding their home, more fully described herein.

The debtors, Frank and Mary Taylor, were to begin making monthly payments of $350.00 on October 15, 1986 and were to continue making payments in the amount of $350.00 on the 15th of each month thereafter. The Taylors, up until the day they were evicted from their home, honored their end of the agreement. A payment check mailed by the Taylors on March 5, 1990 was returned by Federal Land Bank, apparently in furtherance of the conspiracy described herein.

The Taylors were then informed that their "lease" had expired prior to their being evicted, though the Federal Land Bank quite clearly carried the $350.00 a month payment made by the Taylors as a loan. That loan, number 0870563-1-0, is discernible from a document attached to the original complaint as a photostat of August 16, 1989 and May 20, 1985, notifications of decrease in interest.

REASONS FOR GRANTING THE WRIT

PROPOSITION I

"Unpublished" and "Not for Publication" opinions routinely issued by the Federal Circuit Courts of Appeals appear to allow those courts to issue rulings based on political considerations rather than those based on the U.S. Constitution, statutes enacted by Congress, and Supreme Court precedent.

Over a century ago every federal judge knew that it was his duty to administer the law according to its best understanding, regardless of the consequences. U.S. v Goggin, 1 Fed. 49 (E.D. Wisc. 1880).

When our Republic was still in its infancy, this court stated:

One of the greatest objects of government is to protect the life, liberty, and property of individual citizens. Chisholm v Georgia, 2 Dall. 419 (1793).

A dozen years before the way our government and legal system was supposed to go was determined at Yorktown and Saratoga. One of the major reasons the people of this nation had fought that War was to extricate themselves from the English legal system.

Centuries ago the rapid rise to supremacy of the Court of Common Pleas in England had the practical effect that property in land was ultimately whatever the Court of Common Pleas should adjudge. The Court of Common Pleas then decided that it could not be bothered with the affairs of peasants (i.e., the common people). To say that the peasants property rights could not be defended in the Court of Common

Pleas was almost immediately recognized as equivalent to saying that he had no property rights at all. This was the accepted theory from the fourteenth century onwards. Concise History of Common Law by Plucknett 5th Ed., Little, Brown, & Co. 1956 p. 310.

The English legal system continued to deteriorate after our Revolutionary War. At the beginning of the nineteenth century justice had become dilatory, expensive, uncertain, and remote. To the rich it was a costly lottery: to the poor a denial of right, or certain ruin. The class who profited the most were the lawyers. Concise History, p. 73.

The legislative history of 28 U.S.C. section 471 is replete with similar complaints, far too many to describe here. U.S. Code Cong. & Admin. News, vol. 8 (1990) pp. 6808-6811. This series of statutes has apparently been ignored for political considerations, though Plaintiffs are unsure at the moment which (if not both) political consideration predominated.

First, it is well known throughout the Midwest that the Federal Land Banks are "above the law." Hundreds of thousands of dispossessed farmers and homeowners can attest to situations similar to the Plaintiffs. See e.g., NIGHT CAME TO THE FARMS OF THE GREAT PLAINS, by Raymond D. North Acres U.S.A. 1991.

Second, the judge on the case, David R. Hansen, had been appointed to a vacancy on the Eighth Circuit Court of Appeals from the district court and had apparently decided he didn't have time for the affairs of peasants.

PROPOSITION II

The RICO Complaint should not have been dismissed before Discovery was completed. In fact, the District Court's Order was issued almost immediately after Plaintiff's filed a Motion to Compel, Appendix D.

There seems to be a conflict in the Circuits in this regard. In the 1st Circuit the district court abuses its discretion in dismissing an action without allowing a brief period for further discovery to aid the Plaintiff's ongoing effort to achieve compliance with Rule 9 (b) in the RICO context. Feinstein v Resolution Trust Corp. 942 F.2d 34, 43 (1st Circuit 1991).

In the Taylor case described herein there was absolutely no discovery allowed, even with a Motion to Compel, Appendix D.

A court cannot fully (emphasis in original) determine whether a motion to dismiss is well grounded until discovery is completed. E.E.O.C. v KWMT Inc., 718 F. Supp. 1425, 1428 (N.D. Iowa 1988). E.E.O.C. is a published case directly contrary to both the district court's ruling in the Taylor case (E.E.O.C. was authored by Judge Hansen) and the unpublished ruling of the Eighth Circuit Court of Appeals. The unpublished ruling of the Eighth Circuit Court of Appeals violates both mandates issued by this court and its own prior decisions. Appendix E, Petition for Rehearing.

PROPOSITION III

RICO is to be liberally construed. Pub. L. 91-452. The Clayton Act, to Petitioner's knowledge, has never been addressed by this Court. Neither has 28 U.S.C. section 471 et seq.

CONCLUSION

For the reasons stated, it is respectfully requested that the Petitioner's Petition for a Writ of Certioran be granted.

Respectfully submitted,

Frank J. Taylor
1207 Pioneer
Dallas, TX 75224
(214) 941-7199

Mary E. Taylor

CERTIFICATE OF SERVICE

This is to certify that I have on this 29th day of May, 1992 placed a true and exact copy of the foregoing PETITION FOR A WRIT OF CERTIORARI in the United States Mail, postage prepaid, addressed to:

David A. Elderkin
700 Higley Bldg.
P.O. Box 1968
Cedar Rapids, IA 52406

Dale L. Putnam
18 Montgomery St.
P.O. Box 70
Decorah, IA 52101

Solicitor General
Dept. of Justice
Washington, D.C. 20530

Frank J Taylor

Frank J. Taylor
1207 Pioneer
Dallas, TX 75224
(214) 941-7199

Appendix A

United States Court of Appeals
For the Eighth Circuit
No. 91-2901

Frank J. Taylor; Mary E. Taylor	)	
Appellants,	)	
v.	)	
Federal Land Bank of Omaha; Farm Credit Services; Farm Credit Bank of Omaha; Dick Miller, Assistant V.P. of Farm Credit Services, Verdeau Dietrich, Sheriff, Clayton, County, Iowa; Day Welterlen, Edgewood Oil Company, Blair Berens, First Deputy, Clayton County Sheriff Dept.; Key City Moving and Storage Noel C. Stecher, Pres.; Stephen Christopher McGill, Assistant V.P. of Farm Credit Services	)	Appeal from the United States District Court for the Northern District of Iowa [UNPUBLISHED]
Appellees.	)	

Submitted: January 13, 1992

Filed: January 27, 1992

Before McMILLIAN, WOLLMAN, and LOKEN, Circuit Judges

PER CURIAM.

Frank J. Taylor and Mary E. Taylor appeal from the district court's [1] order dismissing their action brought under the Clayton Act and the Raceteer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1961-68, for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). We affirm:

The Taylors alleged that the defendants were part of an enterprise that fraudulently deprived the Taylors of their home. The district court construed the complaint as setting forth only a violation of RICO, and held that the Taylors had failed to allege necessary elements of a RICO claim, i.e., the existence of an "enterprise," see Atlas Pile Driving

---

[1]The Honorable David R. Hansen, then United States District Judge for the Northern District of Iowa, now United States Circuit Judge.

Co. v DiCon Fin Co., 886 F.2d 986, 995 (8th cir. 1989), and a "pattern of racketeering activity," see H.J., Inc. v Northwestern Bell Tel Co., 492 U.S. 229, 239 (1989).

The district court correctly concluded that the Taylors did not allege the necessary elements of a RICO claim. By merely alleging that the defendants participated in a fraudulent scheme to evict them, the Taylors have not sufficiently alleged the existence of an "enterprise." See Atlas Pile Driving, 886 F.2d at 995 (RICO enterprise must be exhibited by common purpose, continuity of structure and personnel, and ascertainable structure distinct from that inherent in pattern of racketeering). By alleging fraudulent actions that pertained to their eviction only and that occurred over a short period of time, the Taylors have not sufficiently alleged a "pattern of racketeering activity." See Terry A. Lambert Plumbing v Western Sec. Bank, 934 F.2d 976, 981 (8th Cir. 1991) (in order to establish "pattern of racketeering," RICO plaintiff must allege more than single plan to defraud single victim over short period of time).

The Taylors' argument that the district judge was biased and should have recused himself is waived because it was not raised in the district court. See Ryder v Morris, 752 F.2d 327, 332 (8th Cir.), cert denied, 471 U.S. 1126 (1985). Finally, we conclude that the district court did not err in

dismissing the amended complaint prior to discovery.

The judgment is affirmed.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

United States Court of Appeals

For the Eighth Circuit

No. 91-2901NICR

Frank J. Taylor, et al.	)	
	)	
Appellants,	)	
	)	Order Denying Petition
vs.	)	for Rehearing and
	)	Suggestion for Rehearing
Federal Land Bank of	)	En Banc
Omaha, et al.,	)	
	)	
Appellees.	)	

The suggestion for rehearing en banc is denied. The petition for rehearing is also denied.

Judge Bean and Judge Hansen took no part in the consideration or decision of this case.

March 11, 1992

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

FRANK J. TAYLOR AND MARY E. TAYLOR,	)	
Plaintiffs,	)	NO. C 90-1040
	)	ORDER
vs.	)	
THE FEDERAL LAND BANK OF OMAHA, et al.,	)	
Defendants.	)	

This matter is before the court on defendants Federal Land Bank of Omaha, Farm Credit Services, Farm Credit Bank of Omaha, Dick Miller, Stephen McGill, and Key City Moving and Storage's (hereinafter "Federal Land Bank defendants") resisted motion to dismiss, filed April 15, 1991; defendants Verdean L. Dietrich and Blair Berens resisted motion to dismiss, filed May 7, 1991; and plaintiffs' motion for rehearing on petition for

preliminary injunction, filed May 13, 1991.[1]

On April 29, 1991, this court reserved ruling on the Federal Land Bank defendants' motion to dismiss and directed those defendants to file a brief outlining their arguments in compliance with Local Rule 14(d). That brief was filed on May 13, 1991.

Plaintiffs appear pro se. Pro se filings should be liberally construed and are held to a less stringent standard than formal filings drafted by an attorney. See e.g., Valiant-Bey v Morris, 829 F.2d 1441, 1443 (9th Cir. 1987); Toombs v Bell, 798 F.2d 297, 298 (9th Cir. 1986). However, "[p]ro se litigants are not excused from compliance with substantive and procedural law." Farnsworth v City of Kansas City, 863 F.2d 33, 34 (9th Cir. 1988), cert denied, 110 S.Ct. 77 (1989). "A pro se litigant should receive meaningful notice of what is expected, [however]. . .the court is not permitted to act as counsel for either party." Burgs v Sissel, 745 F.2d 526, 528 (8th Cir. 1984) (per curiam) (citing Schooley v Kennedy, 712 F.2d 372, 373 (8th Cir. 1983)).

On March 5, 1991, this court entered an order granting defendants' motions for more definite statement. The court's order set forth very particular requirements for plaintiffs to follow in stating their claims. Plaintiffs' first amended

---

[1]The Court views plaintiffs' June 7, 1991 motion in opposition and July 10, 1991 motion opposing stay of discovery as resistances to motions filed by the defendants, rather than as motions in their own right.

complaint, filed April 5, 1991, alleges a violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) (codified at 18 U.S.C. § 1961, et seq.) in Count I. Counts II through VIII allege various other violations of statutory law and the constitution but appear to be asserted only as predicate acts for the alleged pattern of racketeering activity. Plaintiffs' first amended complaint also invokes the Clayton Act but fails to allege any violation of that act. The court construes plaintiffs' complaint as setting forth only a violation of the RICO statute.

A motion to dismiss for failure to state a claim under Fed. R. Civ. P. 12(b)(6) should not be granted "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v Gibson, 355 U.S. 41, 45-46 (1957); Hishon v King 7 Spalding, 467 U.S. 69, 73 (1984); Cruz v Beto, 405 U.S. 319, 322 (1972); First Nat'l Bank v Tracor, Inc., 841 F.2d 212, 214 (8th Cir. 1988). In passing on a motion to dismiss, the allegations of the well-pleaded complaint, construed liberally in favor of the plaintiff, must be accepted as true, as well as all inferences which may be drawn from the facts alleged. Holloway v Lockhart, 792 F.2d 760, 762 (8th Cir. 1986); Flowers v Continental Grain Co., 775 F.2d 1051, 1051 n.2 (8th Cir. 1985); Park View Heights Corp. v City of Black Jack, 467 F.2d 1208, 1212 n.3 (8th Cir. 1972); see also Scheuer v Rhodes, 416 U.S. 232, 236 (1974).

Pattern of Racketeering Activity

Defendants' first argument is that plaintiffs' first amended complaint fails to sufficiently alleges a pattern of racketeering activity sufficient to meet the requirements of the RICO Act. Plaintiffs allege violation of § 1962(a), 1962(b), 1962(c), and 1962(d).

"Pattern of racketeering activity" is defined in 18 U.S.C. § 1961(5).

> "[P]attern of racketeering activity" requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity.

18 U.S.C. § 1961(5). "Racketeering activity" is defined in 18 U.S.C. § 1961(1).

The United States Supreme Court has recently addressed the requirements for showing a pattern of racketeering activity in H.J. Inc. v Northwestern Bell Tel Co., 492 U.S. 229 (1989). "[T]o prove a pattern of racketeering activity a plaintiff or prosecutor must show that the racketeering predicates are related, and that they amount to or pose a threat of continued criminal activity." H.J. Inc., 492 U.S. at 239.

In defining the necessary relationship between the predicate acts, the Supreme Court drew from

the Dangerous Special Offender Sentencing Act, 18 U.S.C. § 3575, et seq. (partially repealed). "'[C]riminal conduct forms a pattern if it embraces criminal acts that have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics, and are not isolated events.'" H.J.Inc., 492 U.S. at 240 (quoting 18 U.S.C. § 3575(e3)).

Continuity is a more difficult concept. "To establish a RICO pattern it must also be shown that the predicates themselves amount to, or that they otherwise constitute a threat of, continuing racketeering activity." H.J. Inc., 492 U.S. at 240. The Court concluded that it is difficult to formulate any general test for continuity but did set forth some guidelines. Id.

> "Continuity" is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. . . . A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement. . . .

> Whether the predicates proved establish a threat of continued racketeering activity depends on the specific facts of each case. . . .
>
> The limits of the relationship and continuity concepts that combine to define a RICO pattern, and the precise methods by which relatedness and continuity or its threat may be proved, cannot be fixed in advance with such clarity that it will always be apparent whether in a particular case a "pattern of racketeering activity" exists.

H.J. Inc., 492 U.S. at 241-43.

The court now turns to the allegations of plaintiffs' first amended complaint. "It is to the conspiracy to deprive the taylors of their home that this complaint is addressed." Plaintiffs' first amended complaint, filed April 5, 1991, at 2. The first predicate act alleged is that:

> On October 6, 1986, Federal Land Bank of Omaha perpetrated a fraud upon a Title 11 Bankruptcy Court by agreeing to an adequate protection agreement that it had no intention of honoring, in violation of 18 U.S.C. § 1001.

First amended complaint, filed April 5, 1991, at 11.

The remaining predicate acts are all alleged to have occurred between March 5, 1990 and April 26, 1990, and are all related to the eviction of the plaintiffs from their home. Id. at 11-13.

The court does not find that the alleged predicate acts "amount to or pose a threat of continued criminal activity." H.J. Inc., 492 U.S. at 239. It is clear that the 1990 acts, standing alone, would not meet the pattern requirement. "Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement." H.J. Inc., 492 U.S. at 242. No relationship between the 1986 alleged predicate act and the 1990 alleged predicate acts is stated in the complaint. The most that the first amended complaint does is allege an improper foreclosure and eviction. Although the first amended complaint generally alleges a pattern and practice of improper foreclosures and evictions, there are no predicate acts alleged separate and apart from the foreclosure and eviction of plaintiffs. One foreclosure eviction does not constitute a "pattern of racketeering activity."

Enterprise

The alleged RICO enterprise consists of the named defendants and unknown others who, from October 1986 to April 26, 1990 allegedly "associated in fact for the purpose of defrauding United States citizens of their property through mail fraud, wire fraud, and fraudulent legal proceedings." Plaintiffs'

first amended complaint at 4. The Eighth Circuit Court of Appeals has stated that

> A RICO enterprise must exhibit three basic characteristics: (1) a common or shared purpose; (2) some continuity of structure and personnel; and (3) an ascertainable structure distinct from that inherent in a pattern of racketeering.

Atlas Pile Driving Co. v Dicon Fin. Co., 886 F.2d 986, 995 (8th Cir. 1989); United States v Kragness, 830 F.2d 842, 855 (8th Cir. 1987). The only connection alleged between defendant Federal Land Bank of Omaha, the alleged "leader of the conspiracy," and the remaining defendants is that the remaining defendants participated in the eviction of plaintiffs on April 26, 1990. Defendants Verdean L. Dietrich and Blair Berens were the police officers who executed the decree of forcible entry and order for removal. Plaintiffs' first amended complaint at 12. Defendants Day Welterlen, Edgewood Oil Company, and Key City Moving and Storage are alleged only to have improperly stored plaintiffs' belongings which subsequently became lost or damaged. Id. The court does not find the requirements of Atlas Pile Driving to have been met by plaintiffs' first amended complaint.

The court declines to address the remaining grounds for dismissal raised by defendants. The court will grant the motions to dismiss on the basis

that plaintiffs' first amended complaint fails to state a claim upon which relief can be granted in that it fails to allege an enterprise or a pattern of racketeering activity as is required by RICO and that it fails to set forth any other cause of action.

ORDER:

Accordingly, It Is Ordered:

1. Defendants Federal Land Bank of Omaha, Farm Credit Services, Farm Credit Bank of Omaha, Dick Miller, Stephen McGill, and Key City Moving and Storage's motion to dismiss, filed April 15, 1991, is granted.

2. Defendants Verdean L. Dietrich and Blair Berens motion to dismiss, filed May 7, 1991, is granted.

3. Plaintiff's motion for rehearing on petition for preliminary injunction, filed May 13, 1991, is denied.

4. Plaintiffs' motion in opposition, filed June 7, 1991, and motion opposing stay of discovery, filed July 10, 1991, are construed by the court as resistances to motions filed by the defendants, rather than as motions in their own right.

5. This matter is dismissed in its entirety.

Done and Ordered this 3rd day of August, 1991.

David R. Hansen, Judge
UNITED STATES DISTRICT COURT

Appendix D

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

FRANK J. TAYLOR, MARY E. TAYLOR	) CIVIL ACTION NO. C-90 1040
Plaintiffs,	) MOTION TO COMPEL
vs.	) DISCOVERY F.R. Civ.P.37
THE FEDERAL LAND BANK OF OMAHA, et. al.,	) PROPOUNDING PARTYS: FRANK TAYLOR, MARY
Defendants	) TAYLOR, RESPONDING PARTY: FEDERAL LAND BANK OF OMAHA

COMES NOW the Plaintiff in the above-entitled action, Frank Taylor, and moves this Court for an Order directing Respondent Federal Land Bank of Omaha to answer the five (5) Interrogatories posed to it and would state in support thereof:

1. The five (5) Interrogatories were mailed to Respondent Federal Land Bank of Omaha on Feb. 21, 1991. Those Interrogatories are attached to this Motion as Exhibit A.

2. On Feb. 26, 1991 counsel for Defendant Federal Land Bank of Omaha requested an Order staying discovery until the Motion For More Definite Statements were ruled upon. That motion was granted by the Magistrate on March 19, 1991.

3. The Motion For More Definite Statements were ruled upon March 4, 1991.

4. That that Order was substantially complied with on March 28, 1991 by the Plaintiffs.

5. That whether the Order was substantially complied with or not is immaterial: discovery was stayed pending ruling on the then-existing dispositive Motions, all of which have been adjudicated since then.

6. That failure of the Defendants to provide the answers to the attached Interrogatories and others to follow disadvantages the Plaintiffs and makes it almost impossible for them to properly pursue this action.

7. That there is no just reason for Defendant Federal Land Bank of Omaha to fail to provide the answers to the First Set of Interrogatories.

Wherefore, Plaintiff Frank J. Taylor requests an Order from this Court directing Federal Land Bank of Omaha and/or its officers to answer the attached Interrogatories.

Respectfully submitted,

_____

Frank J. Taylor
1207 Pioneer
Dallas, TX 75224
(214) 941-7199

CERTIFICATE OF SERVICE

This is to certify that I have on the ____ day of June, 1991, placed a true and exact copy of the foregoing MOTION TO COMPEL DISCOVERY F.R.Civ.P. 37 in the United States Mail, postage prepaid, addressed to:

Dale Putman
518 Montgomery St.
Decorah, IA 52101
ATTORNEY FOR FEDERAL LAND BANK OF OMAHA

Farm Credit Services, Farm Credit Bank of Omaha
206 South 19th Street
Omaha, Nebraska 68102-1755

Dick Miller, Assistant Vice President
Farm Credit Services
3409 Cedar Heights Dr.
Cedar Falls, Iowa 50613-0398

Verdean L. Dietrich, Clayton County Sheriff
Elkader, Iowa 52043

Day Welterlen
Edgewood Oil Company
Edgewood, Iowa 52042

Blair Berens, 1st Deputy
Clayton County Sheriff Department

Elkader, Iowa 52043

Stephen Christopher McGill
Assistant Vice President
Farm Credit Services
2809 Alameda
Cedar Falls, Iowa 50613

Key City Moving and Storage
Noel C. Stecher, President
2300 Twin Valley Dr.
Dubuque, Iowa 52001

U.S. Tax Court
Washington D.C. 20217

U.S. Bankruptcy Court
N.D. Iowa
Cedar Rapids, IA 52407

Respectfully,

_____

Frank J. Taylor

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF IOWA
EASTERN DIVISION

FRANK J. TAYLOR, MARY E. TAYLOR Plaintiffs, vs. THE FEDERAL LAND BANK OF OMAHA, et. al., Defendants.	) CIVIL ACTION NO. C-90 1040) FIRST SET OF INTERROGATORIES) PROPOUNDING PARTYS: FRANK TAYLOR, MARY TAYLOR,) RESPONDING PARTY: FEDERAL LAND BANK OF OMAHA

Comes now the Plaintiffs in the above-numbered cause, Frank Taylor and Mary Taylor, and request that defendant Federal Land Bank of Omaha answer the following interrogatories separately and fully in writing under oath within thirty (30) days, pursuant to the provision of Fed. Rule Civ. Proc. 33(a):

Interrogatory No. 1: Explain, exactly the way you would to a jury, your understanding of the

Order signed by the Honorable M.R. Melloy Oct. 6, 1986 in case no. 86-1844C regarding the "agreement as to adequate protection" of the debt concerning the property described on page 4 of Plaintiffs' Civil Rico and Clayton Act Complaint Civ. No. C-90 1040, said Order attached as Exhibit A to said Complaint.

Answer:

Interrogatory No. 2: Explain, exactly the way you would to a jury, why you returned the payment check mailed by the Plaintiffs, drawn in the amount of $350.00, mailed by the Taylors on March 5, 1990:

Answer:

Interrogatory No. 3: Explain, exactly the way you would to a jury, exactly how you determined that Plaintiffs' "lease" had expired on the property described on page 4 of Complaint Civ. No. C-90 1040.

Answer:

Interrogatory No. 4: Explain, exactly the way you would to a jury, the purpose of loan number 0870563-1-0, evidence there of attached to Complaint Civ. No. C-90 1040 as Exhibit B.

Answer:

Interrogatory No. 5: Explain, exactly the way you would to a jury, how you can charge interest on a lease.

Answer:

_____
Frank Taylor

_____
Mary Taylor

Appendix E

United States Court of Appeals
For the Eighth Circuit
No. 91-2901

Frank J. Taylor; Mary E. Taylor	)	
	)	
Appellants,	)	
	)	
v.	)	
	)	
Federal Land Bank of Omaha, Farm Credit Services; Farm Credit Bank of Omaha, Dick Miller, Assistant V.P. of Farm Credit Services, Verdean Dietrich, Day Welterlen, Edgewood Oil Company; Blair Berens, First Deputy, Clayton County Sheriff Department, Key City Moving and Storage, Noel C. Stecher, President; Stephen Christopher McGill, Assistant V.P. of Farm Credit Services,	)	PETITION FOR REHEARING EN BANC

Appellees

Comes the Plaintiffs in the above-entitled action, Frank and Mary Taylor, and move this court for a rehearing en banc for the following reasons:

1. The deciding panel ignored the case law concerning Fed. R. Civ. P. 12(b) (6) and 33.

2. The deciding panel ignored the statutory law enacted by Congress pertaining to 18 U.S.C. section 1961 (1) (D) and 28 U.S.C. section 471.

3. The deciding panel ignored the case law in the Eighth Circuit.

ARGUMENT

I

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set facts in support of his claim which would entitle him to relief. Conley v Gibson, 78 S.Ct. 99 (1957), Thomas W. Garland inc. v City of St. Louis, 596 F.2d 784 (8th Cir. 1979).

The "enterprise" of the RICO claim was described quite clearly in the RICO complaint (pages 9-10) as would have been the "pattern" requirement if the lower court had adhered to Fed. R. Civ. P. 33. The pattern requirement is met when the plaintiffs discover that someone else has been injured by a related predicate act. Granite Falls Bank v Henrikson, 924 F.2nd 150, 154 (8th Cir. 1991).

The Plaintiffs were not allowed to discover anything.

III

By definition a RICO predicate act is any offense involving fraud connected with a case under Title 11. Complaint, page 11, count II (violation of 18 U.S.C. section 1001 in Oct. 6, 1986 bankruptcy proceeding). See 18 U.S.C. section 1961 (1)(D).

Contrary to the deciding panel's ascertations and studious ignoring of count II of the complaint, activities that began on Oct. 6, 1986, were maintained by the mailing of "interest notices" every year, and culminated in the fraudulent eviction of the Taylors from their home on April 20, 1990 bring the case well outside a "short period of time." See e.g., Ticor Title Ins. Co. v Florida, 937 F.2d 447 (9th Cir. 1991) (three (3) predicate acts over thirteen (13) months).

28 U.S.C. section 471 et. seq. was enacted by Congress Dec. 1, 1990 in order to facilitate deliberate adjudication of civil cases on the merits, to monitor discovery, improve litigation management, and ensure just, speedy, and inexpensive resolutions of civil disputes.

None of the Congressional directives have been adhered to in the instant case. Had. Fed. Rule Civ. P. 33 and 28 U.S.C. section 471 et. seq. been followed there would have been adjudication on the merits, discovery, and a just, speedy, and inexpensive resolution of the instant civil dispute.

The sole function of the court is to enforce the law according to statute. Caminetti v U.S., 37 S.Ct. 192, 194 (1917).

The courts must obey the will of the legislature. U.S. v Simpson, 927 F.2d 1088, 1090 (9th Cir. 1991). See also John P. King Mfg. Co. v City Council of Augusta, Ga. 48 S.Ct. 489-490 (1928).

In expounding on the statute, the court must look to the purpose of that statute. In re Graven, 936 F.2d 378, 385 (8th Cir. 1991). The court must look to the provisions of the whole law, object, and policy. U.S. v Geyler, 934 F.2d 1330, 1336 n. 1 (9th Cir. 1991). That was not done here.

III

"A RICO plaintiff must allege more than a single plan to defraud a single victim over a short period of time." Terry A. Lambert Plumbing v Western Sec. Bank, 934 F.2d 976, 981 (8th Cir. 1991).

A single scheme can constitute a RICO claim. Lambert at 981.

Conduct which lasted for over three years was not sporadic activity nor is it the type of conduct occurring over a few weeks or months. Lambert at

980.

From a violation of 18 U.S.C. 1001 and fraud in a bankruptcy proceeding on Oct. 6, 1986, through yearly mail fraud, to the bogus legal proceedings of April 20, 1990, is conduct which lasted over three years and was not sporadic activity. Is there a threat of continued activity of the type complained of? Lambert at 980.

It is well settled that one panel of an appeals court cannot over-rule decisions of another panel. Grisham v Commercial Union Ins. Co., 927 F.2d 1039, 1041-1042 (8th Cir. 1991). It is equally well settled that a Court of Appeals cannot over-rule the U.S. Supreme Court. Kitowski v U.S., 931 F.2d 1526, 1529 (11th Cir. 1991).

Which raises two questions in the disjunctive:

Can one panel of the Eighth Circuit Court of Appeals "over-rule" both the U.S. Supreme Court and prior decisions of the Eighth Circuit Court of Appeals by simply ignoring sections of pleadings of the Plaintiffs;

or;

is further amendment of the complaint in the interest of justice? Elliott v Foufas, 867 F.2d 877, 882 (5th Cir. 1989) (no discovery attempted).

Finally, the issues raised pursuant to the bias

of the trial judge and the supposed "waiver" of that issues are mis-directed.

There are exceptions to the rule, including some cases where injustice might otherwise result. Ryder v Morris, 752 F.2d 327, 332 (8th Cir. 1985).

Is this court prepared to say that unpunished stealing of the Plaintiff's home (that took over three years to accomplish) is just result?

28 U.S.C. section 455 (a) is self-executing. State of Idaho v Freeman, 507 F.Supp. 706 (D. Idaho 1981). Judge Hansen's bias was a subject of discussion in the Acres U.S.A. Conference held in Kansas City, Missouri in December of 1991 (tape available). One woman had successfully recused him for bias. That information was not known to the Plaintiffs at the time this case was in the district court.

CONCLUSION

For the reason given herein the decision of the district court must be reversed and this case remanded for further proceedings and discovery.

Anything less violates the oath of office every federal judge takes, 28 U.S.C. section 453.

Respectfully submitted,

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Frank J. Taylor

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Mary Taylor

CERTIFICATE OF SERVICE

This is to certify that I have on this 5th day of February, 1992 placed a true and exact copy of the foregoing PETITION FOR REHEARING EN BANC in the United States Mail, postage prepaid, addressed to:

Tamara L. Mitchell
ELDERKIN AND PIRNIE
700 Higley Bldg.
P.O. Box 1968
Cedar Rapids, IA 52406

Dale L. Putman
18 Montgomery St.
P.O. Box 70
Decorah, IA 52101

Frank J. Taylor
1207 Pioneer
Dallas, TX 75224
(214) 941-7199